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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Amendment of Part 22 of the
Commission's Rules to Delete
Section 22.119 and Permit the
Concurrent Use of Transmitters
In Common Carrier and Non-
Common Carrier Services
And Exempt From Federal
Tariff Requirements

CC Docket No. 94-46
RM No. 8367

To: The Commission

**JOINT COMMENTS OF AIRTOUCH PAGING
AND ARCH COMMUNICATIONS GROUP**

AirTouch Paging ("AirTouch") and Arch
Communications Group, Inc. ("Arch"), by their attorneys,
hereby submit their joint comments in support of the Notice
of Proposed Rulemaking, FCC 94-113, released June 9, 1994 in
the above-captioned proceeding (the "NPRM"). The following
is respectfully shown:

1. The Commission is proposing to delete Section
22.119 of the Commission's Public Mobile Service Rules which
prohibits the concurrent licensing and use of transmitters
for common carrier and non-common carrier purposes.^{1/} The
Commission is proposing to permit the joint licensing and

^{1/} NPRM, para. 1.

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use of such transmitters in the common carrier (Part 22) and private carrier (Part 90) services.

2. AirTouch and Arch strongly support the Commission's proposal. As has been correctly noted by the Commission, Section 22.119 in its current form appears to be a throw-back to an earlier era when the Commission relied upon regulations rather than competitive market forces to assure that common carrier subscribers were not subjected to unnecessary delays and interruptions in service.^{2/} Now, the mobile communications industry has become extremely competitive due to the relaxation of barriers to entry at both the federal and state levels. Competition has been further enhanced by increases in channel capacity. The result is a robustly competitive environment in which market forces serve as a powerful incentive to carriers to provide an excellent grade of service. Thus, the Commission is clearly correct in concluding that Section 22.119 of its rules need not be retained in order to protect common carrier subscribers.^{3/}

3. The Commission has tentatively concluded that permitting a single transmitter to operate on both common carrier and private carrier channels will facilitate the construction of wide-area systems by carriers who are

^{2/} NPRM, para. 2.

^{3/} See NPRM, paras. 3 and 6.

operating both Part 22 and Part 90 facilities.^{4/} Again, this Commission determination is correct. Because of increases in subscriber demands, wireless communications companies have found it to be necessary to add both channel capacity and geographic coverage to their systems. Because of common carrier spectrum shortages, many carriers, like AirTouch and Arch, found it necessary to diversify and add Part 90 facilities to meet these expanding customer demands. However, the ability to implement service efficiently on Part 90 systems, which overlay in whole or in part common carrier systems, is inhibited by the requirements of Section 22.119. This rule section has created situations in which carriers are obligated to construct multiple transmitters at a single location when, in fact, a single, frequency-agile transmitter would serve the customer needs in the short term. The requirement for multiple transmitters has had negative repercussions both in terms of cost and construction delays.

4. Section 22.119 has become particularly anomalous in the current environment in which the Commission, by statutory mandate, is seeking to create competitive parity between functionally equivalent Part 22 and Part 90 services.^{5/} The Commission has properly found that common carrier paging and private carrier paging

^{4/} NPRM, para. 4.

^{5/} NPRM, para. 5.

services are substantially similar, and thus should be subjected to comparable regulatory requirements. A natural outgrowth of this move towards equal regulatory treatment must be the elimination of an outdated requirement prohibiting the shared use of transmitters between these services.

5. The Commission has questioned whether the joint use of transmitters in Part 22 and Part 90 services should be restricted in any manner.^{6/} One cited option is to allow shared transmitter only when overlapping Part 90 and Part 22 systems serve different territories (e.g. nationwide versus regional; regional versus local). Another alternative under consideration is to permit sharing only where the licensee uses a batched paging function as part of its shared transmitter system. These questions arise in the context of the Commission's concern that it retain appropriate safeguards to prevent warehousing of exclusively assigned frequencies.

6. AirTouch and Arch do not believe that the Commission should place any restrictions on the shared use of transmitters between Part 90 and Part 22 licensees. Requiring carriers to use a batched paging function would impose a level of technical micromanagement that should be avoided. The technology being applied in wireless communications is changing and evolving rapidly. Proposing

^{6/} NPRM, para. 7.

specific requirements in the Commission's rules based upon current technical solutions serves to reduce flexibility and, perhaps, stifle innovation. Also, allowing sharing only for systems with different coverage will lead to difficult definitional issues.

7. AirTouch and Arch also believe there are sufficient means to discourage warehousing in place or in process such that no additional conditions need be imposed in the course of this rulemaking proceeding. The implementation of annual regulatory fees, increased application fees, and the move towards the auctioning of scarce spectrum, provide powerful financial disincentives to warehouse spectrum. Also, the Commission has proposed, and AirTouch and Arch have supported, the implementation of finder's preference procedures that would enable applicants to identify and secure fallow spectrum. And, the Commission recently has been imposing buildout requirements in connection with area-wide spectrum licenses that discourage warehousing.²¹ In sum, existing rules are in place to deal with warehousing; additional anti-warehousing requirements need not be adopted in this docket.

8. Finally, the Commission seeks comments on whether it should allow two different licensees to share the

²¹ Both PCP Exclusivity and Narrowband PCS rules impose stringent buildout requirements.

same transmitter.^{8/} The answer is yes. As the wireless communications market has evolved from a local, to a regional and now to a national market, cooperative arrangements between carriers have been increasingly common to permit service coverage areas to be expanded. This is a trend that the Commission should encourage and not discourage. The way for the Commission to provide the needed encouragement is to permit the shared use of transmitters between different Part 90 and Part 22 licensees.

9. The foregoing premises having been duly considered, AirTouch and Arch respectfully submit that the proposed deletion of Section 22.119 of the Commission's rules serves the public interest, and, consequently, the Commission should proceed as it has proposed.

Respectfully submitted,

**AIRTOUCH PAGING and
ARCH COMMUNICATIONS GROUP**

By: Mark A. Stachiw
AIRTOUCH PAGING
12221 Merit Drive, Suite 800
Dallas, Texas 75251
(214) 458-5200

Counsel to AirTouch Paging

By: Carl W. Northrop
BRYAN CAVE
700 13th St., N.W., Suite 700
Washington, D.C. 20005
(202) 508-6000

Counsel to Arch
Communications Group
and AirTouch Paging

July 11, 1994

^{8/} NPRM, para. 7.

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 11th day of July, 1994, caused copies of the foregoing Joint Comments of AirTouch Paging and Arch Communications Group to be delivered by hand, courier charges prepaid, to the following:

Richard Metzger
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Gerald P. Vaughan
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Myron C. Peck
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, DC 20554

John Cimko, Jr.
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, DC 20554

Peter Batacan
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 659
Washington, DC 20554

Judith Argentieri
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, DC 20554


Tana Christine Maples